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March 27, 2007

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Case Name: Personnel Security Hearing

Date of Filing: September 25, 2006

Case Number: TSO-0435

This Decision concerns the eligibility of XXXXXX XX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} A Department of Energy (DOE) Operations Office suspended the individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth in this Decision, I have determined that the individual's security clearance should be restored.

I. Background

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the

^{1/} An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

The individual was granted a security clearance as a condition of his employment with the DOE. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was being suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility. This derogatory information is described in a Notification Letter issued to the individual on July 14, 2006, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections h, j and l. More specifically, the Notification Letter alleges that the individual has: 1) "an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in [the individual's] judgment and reliability;" 2) "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse;" and 3) "[e]ngaged in unusual conduct or is subject to circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of national security." 10 C.F.R. §§ 710.8(h), (j) and (l) (Criterion H, Criterion J and Criterion L, respectively). The bases for these findings are summarized below.

With regard to Criteria H and J, the Notification Letter states that on March 16, 2006, the individual was evaluated by a DOE consultant-psychiatrist (DOE Psychiatrist) who issued a report in which he diagnosed the individual with Substance Dependence, Alcohol based upon diagnostic criteria set forth in the Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR (DSM-IV TR). According to the DOE Psychiatrist, this is a mental condition that causes or may cause a significant defect in the individual's judgment or reliability. In addition, the DOE Psychiatrist determined that the individual has been a user of alcohol habitually to excess from 1966 to 2005, and within the twelve months preceding the psychiatric interview. The Notification Letter further states that in 1998, the individual was arrested on a charge of Driving Under the Influence (DUI), and that the individual made several statements during his psychiatric interview indicating that his drinking has resulted in conflicts with his wife for many years.

In reference to Criterion L, the Notification Letter states that following his 1998 DUI, the individual represented to DOE Security that he would not drink and drive again. However, the individual has admittedly failed to abide by that commitment. In addition, the individual's security file shows that he has given inconsistent statements regarding his 1998 DUI arrest and another incident which occurred in 2000 or 2001, when he was stopped by the police after leaving a micro-brewery but not arrested.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on September 26, 2006, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On September 27, 2006, I was appointed as Hearing Officer. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, I established a hearing date. At the hearing, the DOE Counsel called the DOE Psychiatrist as DOE Security's sole witness. Apart from testifying on his own behalf, the individual called as witnesses: his wife, his Alcoholics Anonymous (AA) sponsor, his supervisor, three co-workers who are also friends, his treating psychologist and a psychiatrist. The transcript taken at the hearing will be hereinafter cited as "Tr." Various documents that were submitted by the DOE Counsel will be cited as "DOE Exh." and those submitted by the individual cited as "Ind. Exh."

Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual was hired by the DOE in 1989 and requested a security clearance. During the background investigation of the individual, DOE Security received information that the individual was involved in an incident in 1968 while in college, when the individual and several of his friends were arrested on a charge of Disturbing the Peace after becoming very intoxicated and attempting to remove a headstone from a graveyard at 2 a.m. During the investigation interview, the individual admitted that he resided in a fraternity house while in college and became intoxicated on a regular basis. DOE Security determined that the matter was sufficiently mitigated by passage of time and the individual was granted a security clearance in January 1990.

However, security concerns regarding the individual's use of alcohol were revived in July 1998, when the individual was arrested on a charge of Driving Under the Influence (DUI). On the day of his arrest, the individual had consumed several beers while doing yard work at his home and decided to go purchase more beer before finishing his work. The sales clerk at the store refused to sell more beer to the individual but instead summoned the police who arrested the individual in the parking lot while attempting to leave. The individual's blood alcohol level (BAL) was measured at .17 at the time of his arrest. The individual reported the arrest to DOE Security who required the individual to complete a Letter of Interrogatory (LOI), dated October 22, 1998, concerning his arrest and use of alcohol, and referred the individual to a DOE psychiatrist (1998 DOE Psychiatrist) who evaluated the individual on December 22, 1998.

In his report dated January 5, 1999, the DOE psychiatrist determined that while the individual apparently had an alcohol-related disorder, likely Alcohol Abuse, while in

college and as he entered graduate school, the individual had subsequently reduced his drinking and did not show signs of a maladaptive pattern of drinking at the time of the 1998 evaluation. The DOE psychiatrist therefore concluded in his report that the individual did not present signs or symptoms of a mental illness or disorder that may cause a significant defect in his judgment or reliability. In addition, the individual stated in the LOI and during the psychiatric interview that he would no longer drive after drinking. On the basis of the LOI and DOE psychiatrist's report, DOE Security deemed the matter of the individual's DUI arrest resolved and the individual was allowed to retain his security clearance.

In 2005, DOE Security conducted a periodic reinvestigation of the individual's eligibility to hold a security clearance. During the customary background interview, the individual gave a description of the circumstances leading to his 1998 DUI arrest that differed from the information he provided in the LOI and during the 1998 psychiatric interview. The individual was therefore summoned by DOE Security for a Personnel Security Interview (PSI), conducted on January 5, 2006. During the PSI, the individual described his history of alcohol use and the circumstances of the 1998 DUI. The individual further provided information regarding two other alcohol-related incidents. First, in 1995, the police were summoned to the individual's home after he had an altercation with his wife and he pushed her to the floor. The individual had consumed two beers prior to the incident but was not arrested. In the second incident, which occurred in 2000 or 2001, the individual was stopped by the police after leaving a micro-brewery pub where he shared a pitcher of beer with his brother. The individual was given a breathalyzer test by the policeman who determined that the individual was at or below the legal limit of .08. The individual was therefore not arrested although his wife was summoned to drive him home. However, the matter was of concern to DOE Security since it appeared to contravene the commitment made by the individual in 1998 that he would no longer drive after drinking. DOE Security therefore decided to refer the individual to the DOE Psychiatrist for an evaluation.

The DOE Psychiatrist reviewed the individual's personnel security file and performed a psychiatric interview of the individual on March 16, 2006. In his report issued on March 19, 2006, the DOE Psychiatrist set forth his opinion that the individual meets the DSM-IV TR criteria for Substance Dependence, Alcohol (Alcohol Dependence), with Physiological Dependence in Sustained Partial Remission. The DOE Psychiatrist further states in his report that the individual's Alcohol Dependence is an illness which causes or may cause a significant defect in the individual's judgment or reliability, until such time as the individual is able to demonstrate adequate evidence of rehabilitation or reformation. In addition, the DOE Psychiatrist found that the individual was a user of alcohol habitually to excess from 1996 to 2005, and during the twelve months preceding his psychiatric interview.

The DOE Psychiatrist finally opined in his report that the individual was not demonstrating reformation or rehabilitation from his Alcohol Dependence or drinking habitually to excess. In this regard, the DOE Psychiatrist recommended either of the following as evidence of rehabilitation: 1) total abstinence from alcohol and non-prescribed controlled substances for two years with 200 hours of attendance at Alcoholics Anonymous (AA), working the 12-Step program with a sponsor over a minimum of two years, or 2) total abstinence for three years with satisfactory completion of a professionally led, alcohol treatment program, with aftercare, over a minimum of six months. As adequate evidence of reformation, the DOE Psychiatrist recommended two or three and a half years of abstinence if the individual completes either of the two rehabilitation programs, or five years of abstinence if he does not.

II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. See Personnel Security Hearing, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's

access authorization should be restored since I conclude that such restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

A. Criteria H & J; Mental Condition, Use of Alcohol Habitually to Excess

(1) Derogatory Information

In his report, the DOE Psychiatrist diagnosed the individual with Alcohol Dependence based upon diagnostic criteria set forth in the DSM-IV TR. DOE Exh. 2 at 38-40. The DSM-IV TR provides that a diagnosis of Alcohol Dependence is supported when the individual manifests three or more of the following behaviors occurring at any time within the same twelve-month period: 1) increased tolerance, 2) withdrawal, 3) alcohol often consumed in larger amounts or over a longer period than intended; 4) persistent desire or unsuccessful efforts to cut down, 5) great deal of time spent in activities to obtain alcohol; 6) important social, occupational, or recreational activities given up or reduced; and 7) continued use despite physical or psychological problem caused or exacerbated by alcohol. See *id.* at 38-39. Based upon his examination of the individual's security file and the psychiatric interview, the DOE Psychiatrist determined that the individual satisfied three or more of these criteria in 1969, 1972, 1982, in the 1990's, and in 2001. More specifically, the DOE Psychiatrist relied on criteria 1, 3, 4 and 7 (referred to below as Criterion D1, D3, D4 and D7, respectively) in reaching his diagnosis. *Id.* at 39; see Tr. at 247-48.

As an alternative diagnosis, the DOE Psychiatrist determined that the individual is suffering from Alcohol Abuse.^{2/} The DSM-IV TR generally provides that a diagnosis of Alcohol Abuse is supported when the individual manifests one of four behaviors within a twelve-month period: 1) recurrent failure to fulfill major role obligations at work, school or home, 2) recurrent use in situations in which it is physically hazardous, 3) recurrent substance-related legal problems, and 4) continued use despite social or interpersonal problems. See DOE Exh. 2 at 40. According to the DOE Psychiatrist, the individual satisfied one or more of these criteria during various time periods beginning in 1969. In making his diagnosis for recent years, the DOE Psychiatrist found that on several occasions during 2004, the individual used garden power tools while in an impaired condition (Criterion A2), and that during their 28 years of marriage the individual and his wife have had many arguments about his drinking

^{2/} Under the *DSM-IV TR*, a subject may be diagnosed as suffering from Alcohol Abuse only if "[t]he symptoms have never met the criteria for Substance Dependence for this class of substance." See DOE Exh. 2 at 40. The DOE Psychiatrist's primary diagnosis for the individual is a Alcohol Dependence and he therefore diagnosed him with Alcohol Abuse only in the alternative.

(Criterion A4), most recently in August 2005. In addition, the DOE Psychiatrist determined that the individual drank habitually to excess from 1966 until 2005, and perhaps continuing into 2006. *Id.* at 41.

At the hearing, the individual contested the diagnosis of Alcohol Dependence and asserted that much of the information upon which the DOE Psychiatrist based his findings and diagnosis is incorrect, as explained in the succeeding section of this decision. Nonetheless, the individual acknowledged that he drank heavily in college and excessively at times during the 1990's prior to his 1998 DUI arrest. The expert witnesses called by the individual, a psychiatrist and his treating psychologist, also disagreed with the DOE's Psychiatrist diagnosis of Alcohol Dependence. However, as discussed below, the individual's psychiatric witnesses concurred that the individual should properly have been diagnosed as suffering from Alcohol Abuse at the time he was evaluated by the DOE Psychiatrist in March 2006. See *Tr.* at 189, 212, 232.

Thus, I find that DOE Security properly invoked Criteria H and J in suspending the individual's security clearance. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. See, e.g., Personnel Security Hearing, Case No. VSO-0079, 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); Personnel Security Hearing, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); Personnel Security Hearing, Case No. VSO-0014, *aff'd*, Personnel Security Review, 25 DOE ¶ 83,002 (1995) (affirmed by OSA, 1995). As observed in these cases, an individual's excessive use of alcohol might impair his judgment and reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. Accordingly, I will turn to whether the individual has presented sufficient evidence of rehabilitation or reformation to mitigate the security concerns of DOE.

(2) Mitigating Evidence

(a) Diagnosis and Habitual Use

Before weighing the sufficiency of the mitigating evidence presented by the individual in this case, it is necessary to first assess the accuracy of the DOE Psychiatrist's primary diagnosis of Alcohol Dependence, as well as his report finding that the individual "has been a user of alcohol habitually to excess from 1966 to 2005 and . . . to excess in 2006, or at least in the last 12 months [preceding] the time that I examined him." DOE Exh. 2 at 41. This diagnosis and finding are substantially based upon the information that the DOE Psychiatrist states the individual provided during his psychiatric interview. According to the DOE Psychiatrist's report, the individual stated that he was intoxicated: 1) five times during his junior year of high school and ten times during his senior year, 2) ten times during his freshman year of college (from

1969 to 1972) and that it steadily increased to 50 times during his senior year, 3) approximately 25 times a year between 1972 and 1978, and 20 to 30 times a year while in graduate school, from 1979 to 1982, 4) ten to fifteen times a year from 1982 to 1989, and ten times a year from 1990 to 1999, and 5) three to five times a year from 2000 to 2006. See *id.* at 32-33. In addition, the DOE Psychiatrist states that the individual admitted to having 27 alcohol blackouts over his lifetime, including two in high school, ten in college, and 15 during the 35 years after college with a final blackout incident occurring in 2002 or 2003. *Id.* at 35.

However, the description of the individual's alcohol history contained in the DOE Psychiatrist's report varies substantially from the information provided by the individual in other instances and at the hearing. In the LOI completed by the individual in 1998 following his DUI arrest, the individual stated that since entering his 30's (during the late 1980's and 1990's), he consumed approximately a six-pack a week, and became intoxicated two to three times a year. He also stated that he had experienced only one or two blackouts in his life, while in college. See DOE Exh. 2 at 25-26 (quoting LOI, 10/22/98). Similarly, during his psychiatric evaluation following the DUI, the individual reportedly informed the 1998 DOE psychiatrist that he did not begin drinking until college when he admittedly became intoxicated on a regular basis, but that following graduate school his drinking tapered off to a six-pack a week mostly on weekends, and limiting himself to two to three beers on each occasion. See DOE Exh. 2 at 23 (quoting Psychiatric Report dated 01/05/99). The individual further told the 1998 DOE psychiatrist he had experienced only two blackouts in his lifetime, while in college. *Id.*

During the January 2006 PSI, the individual described his drinking history consistent with the information he provided in 1998, stating that he drank rarely in high school and excessively in college, but that his drinking subsided following graduate school and particularly during his 30's when he reduced his consumption to a six-pack of beer a week. See DOE Exh. 3 (PSI) at 104-09. The individual stated during the PSI that he had experienced blackouts "maybe six times" while in college and during the years preceding graduate school. *Id.* at 112-13.

At the hearing, the individual testified that he drank very little in high school, but acknowledged that he drank often and excessively in college, stating that he lived in a fraternity house where "it was parties every night on the weekends, sometimes during the week, . . . beer filled two or three refrigerators, kegs were open continuously." *Tr.* at 88. The individual stated, however, that his drinking tapered off during and following graduate school and from 1982 to 1996, he drank an average of ten to twelve beers a week, consisting of "a couple of beers during the week, maybe three, four, and the rest on the weekend, maybe at one sitting, maybe at two sittings." *Tr.* at 92. The individual testified that following his DUI in 1998, "I cut my drinking probably in half, down to a six-pack a week." *Id.* at 100-01. The individual maintained

that he continued this drinking pattern during the years preceding his psychiatric interview in March 2006, testifying that “since ‘98, I have ramped down to about five to eight beers, a six-pack a week, and that is responsible social drinking.” Tr. at 133.

Regarding his frequency of intoxication, the individual stated that the information stated in the DOE Psychiatrist’s report is not accurate and reflects a communication breakdown during the psychiatric interview. At the hearing, the individual testified that he was not intoxicated ten times a year from 1990 to 1999, and three to five times a year from 2000 to 2006, but instead it was closer to a total of ten times from 1990 to 1999, and a total of three to five times from 2000 to 2006. See Tr. at 144-45. The individual testified that he misunderstood the question posed by the DOE Psychiatrist when stating that he had experienced 27 blackouts during his lifetime. According to the individual, he interpreted the inquiry as covering more general losses of memory such as “where are my keys [or] did I talk to that guy last night.” Tr. at 138.

The individual’s wife corroborated the individual’s testimony, testifying that she recalled the individual getting intoxicated five times while in graduate school in the early 1980's after they were married, and that after graduate school the individual became a weekend drinker but was rarely intoxicated. Tr. at 20. The individual's wife testified that he began to drink more frequently, twice during the week and on weekends, during the mid-1990's when they were experiencing difficulty in having a second child. Tr. at 21-22. She testified, however, that since receiving the DUI in 1998, she could only recall the individual being intoxicated “maybe two to three [times] max.” Tr. at 32; see also Tr. at 58. According to the individual’s wife, he typically drank four to six beers a week during the two and one-half years preceding his psychiatric interview in March 2006. Tr. at 33-34. The individual’s wife could recall no incidents of the individual telling her that he had an alcoholic blackout. Tr. at 58.

The individual’s wife acknowledged that she and the individual have quarreled a number of times about his drinking over their 28 years of marriage. She clarified, however, that these arguments were not necessarily caused by the individual becoming intoxicated. The individual’s wife stated that she does not drink at all and wished that the individual did not drink, and she would sometimes become intolerant and angry after the individual had consumed only two or three beers. Tr. at 28. According to the individual’s wife, they last quarreled about his drinking in August 2005, when the

individual became intoxicated at a relative's birthday party.^{3/} Tr. at 32. This was also, in the wife's recollection, the last time that the individual drank to intoxication. Id.

Finally, the information the individual provided to his treating psychologist (Psychologist) about his use of alcohol was consistent with testimony of the individual and his wife. The Psychologist began treating the individual after his security clearance was suspended in the spring of 2006, and has seen the individual 21 times over the past several months, sometimes in combination with the individual's wife and son. Tr. at 181. The Psychologist further reviewed the psychiatric reports of both the DOE Psychiatrist, who examined the individual in March 2006, and the 1998 DOE psychiatrist. Id. Based upon the information she reviewed and received during her counseling sessions, the Psychologist strongly disagreed with the current DOE Psychiatrist's diagnosis of Alcohol Dependence, opining that the individual never satisfied criterion D1 (increased tolerance) or D7 (continued use despite physical or psychological problem). Tr. at 191-92. According to the Psychologist, "the average amount [the individual] used to drink – in the last four-and-a-half years, was a six-pack or so per week. That is not, under anybody's definition, demonstrative of alcohol dependence." Tr. at 207.^{4/} Instead, the Psychologist stated that she is "firmly persuaded [the individual] has an alcohol abuse disorder." Tr. at 189.

The individual also called a psychiatrist (Individual's Psychiatrist) who reviewed the individual's psychiatric records, met with the individual one time and performed an evaluation for purposes of the hearing. The Individual's Psychiatrist agreed with the opinion of the Psychologist, expressing his opinion that "it's alcohol abuse, it is not alcohol dependence." Tr. at 215; see also Tr. at 222. The Individual's Psychiatrist testified that after college, the individual has shown no signs of a severe pathology indicated by a diagnosis of Alcohol Dependence, and further that he did not believe that the individual's college drinking "would count," noting that the individual is now 56 years old. Tr. at 222-23. However, the Individual's Psychiatrist agreed that the individual should properly be diagnosed with Alcohol Abuse based upon his recurring

^{3/} There is discrepant information regarding the date of the birthday party referenced by the individual's wife. During the psychiatric interview, the individual told the DOE Psychiatrist about the argument with his wife and stated that the party occurred in August 2005. See DOE Exh. 2 at 31. The individual's treating psychologist also apparently believes that the incident occurred in August 2005, and that this was the last time the individual drank to intoxication. Tr. at 188, 205. During the hearing, however, counsel for the individual stated that based upon his private discussions with the individual, he believed that the birthday party occurred in August 2004. See Tr. at 157. However, I received no testimony to substantiate counsel's assertion. I therefore find that the party was held in August 2005.

^{4/} The Psychologist did not evaluate the individual or express an opinion on whether the individual was a user of alcohol habitually to excess. Tr. at 210.

arguments with his wife about his drinking, with the last occurring in August 2005. Tr. at 232.

Having carefully considered the record of this case, I am persuaded by the testimony of the Psychologist and the Individual's Psychiatrist that the individual was more accurately diagnosed with Alcohol Abuse rather than Alcohol Dependence. While the individual may have displayed elements of dependent alcohol use while in college, I find that the record does not support the DOE Psychiatrist's finding that three or more of the dependence criteria applied to the individual subsequent to that time.^{5/} The individual's dependent level of drinking occurred 35 years ago and no longer poses a security concern in my view. I find of greater concern, from a security standpoint, the individual's use of alcohol in more recent years. In this regard, I note that the 1998 DOE psychiatrist determined that the individual did not have an alcohol problem. However, the two expert witnesses called by the individual at the hearing concurred that the individual should have been diagnosed with Alcohol Abuse in March 2006, which was also the alternative diagnosis rendered by the DOE Psychiatrist. DOE Exh. 2 at 40-41. I find that the record supports this diagnosis based upon the individual's recurring arguments with his wife about his drinking, ending in August 2005.

In addition, I find that in recent years through the end of 2005,^{6/} the individual was a user of alcohol habitually to excess. As discussed above, there is discrepant

^{5/} For instance, the DOE Psychiatrist's application of Criterion D7 for years subsequent to college was based upon his belief that the individual experienced as many as 15 alcohol blackouts during years subsequent to college, ending with two or three blackouts in 2002 or 2003. See DOE Exh. 2 at 35; Tr. at 248. I am satisfied, however, based upon information the individual provided in other contexts and at the hearing, that this is not accurate and stemmed from a misunderstanding of the DOE Psychiatrist's question. The DOE Psychiatrist conceded that he had difficulty extracting information during the psychiatric interview due to the individual's style of communicating: "It took me four hours to get the same amount of information from him that I usually get in one or two hours . . . I'd have to go back and ask the question again, and sometimes he would qualify the answer." Tr. at 258. As noted above, the individual's wife, who married the individual several years subsequent to his college years, could not remember the individual ever experiencing an alcohol blackout. I find it very unlikely that the individual's wife would not recall one incident if, as stated in the DOE Psychiatrist's report, the individual had 15 actual alcohol blackouts after he completed college. Thus, I find that the alcoholic blackouts experienced by the individual, likely from three to six episodes, occurred during his college years and early 1970's, as he reported during his 1998 psychiatric examination and PSI in 2006.

^{6/} The DOE Psychiatrist himself stated in his report that there is only "weak evidence" that the individual was drinking habitually to excess during the first months of 2006, prior to his psychiatric evaluation in March 2006. DOE Exh. 2 at 41.

information regarding the individual's frequency of intoxication, and the individual has disclaimed much of the information stated in the DOE Psychiatrist's report. The weight of the evidence and testimony supports a finding that much of the information contained in the DOE Psychiatrist's report is not accurate.

Their accuracy notwithstanding, the statements reportedly made by the individual cannot be completely ignored. For instance, the individual indicated to the DOE Psychiatrist that he participated in a monthly poker game with several of his friends, from 1999 to 2002, and that he became intoxicated at a number of these games. DOE Exh. 2 at 30; see Tr. at 102.^{7/} The individual also informed the DOE Psychiatrist that during 2004, prior to moving to the state where his present job is located, he was intoxicated approximately five times after consuming a six-pack of beer while doing yard work. DOE Exh. 2 at 30. The individual also revealed an incident of intoxication on St. Patrick's Day 2005, when he consumed three beers at a bar and then consumed another three beers after arriving home, leading to an argument with his wife. *Id.* at 31. As noted above, the individual had a final incident of intoxication at a birthday party in August 2005. Based upon the available evidence, I find that from 2000 to 2005, the individual likely drank to intoxication on an average of five times a year. In view of the concurrent diagnosis of Alcohol Abuse, I find that this constitutes use of alcohol habitually to excess in the case of the individual. I will now turn to whether the individual has presented adequate evidence of rehabilitation and reformation from his diagnosis of Alcohol Abuse and use of alcohol habitually to excess.

(b) Rehabilitation and Reformation

The individual testified that he was "dumbfounded" when he found out in early April 2006 that his security clearance had been suspended. Tr. at 109. Nonetheless, the record shows that the individual took very seriously the concerns of DOE Security about his use of alcohol and immediately took steps to address those concerns. According to the individual, he ceased all consumption of alcohol beginning April 5, 2006, and went to see his Employee Assistance Program (EAP) counselor. Tr. at 109-10. The EAP counselor referred the individual to the Psychologist who has been treating the individual on a bi-weekly basis since that time, and had conducted 21 sessions with the individual by the time of the hearing. Tr. at 181. The Psychologist has also met with the individual's wife and son. *Id.* According to the Psychologist, her

^{7/} During this time period, in 2000 or 2001, the individual was stopped by the police after leaving a micro-brewery pub where he shared a pitcher of beer with his brother. The individual was not arrested after a breathalyzer test administered by the policeman showed that the individual's blood alcohol level was not above the legal limit of .08. However, policeman considered the individual close enough to the limit that he would not let the individual drive and required the individual to call his wife to pick him up. *See* Tr. at 106.

treatment consists of a “motivational interview approach” which enforces elements of alcohol education, relapse prevention and cognitive analysis. Tr. at 186.

The Psychologist also encouraged the individual to begin attending AA. Tr. at 111. The individual diligently pursued the Psychologist’s recommendation and, at the hearing submitted records showing that he has been attending AA on a daily basis since April 10, 2006. See Ind. Exh. 1. The individual testified, and the records show, that the individual attended seven to nine AA meetings per week during the two months preceding the hearing. Id.; Tr. at 113-14. Within a few months after beginning AA, the individual obtained an AA sponsor who testified at the hearing. The individual’s AA sponsor testified that he meets with the individual two to three times a week outside of AA meetings. Tr. at 73. According to the AA sponsor, the individual has become an active participant in AA, and has demonstrated sincere commitment to the program and maintaining his abstinence. Tr. at 78-79. The AA sponsor stated that the individual comes early to meetings to clean the meeting facility without being asked and has volunteered to help others in the group. Tr. at 79-80. The individual appeared sincere in testifying: “I enjoy the fellowship . . . I’ve gone shopping for food there, I help clean up . . . I think it’s a good program. . . . [t]he solution here is abstinence, so if you want to obtain that, this is the way to do it.” Tr. at 112-14.

I found the individual equally candid in stating his determination to maintain his sobriety, in view of what is at stake: “[M]y wife is off my back, and I’m going to lose my job if I don’t abstain, my son is happier, I’m healthier . . . I am going to try to do my best to just totally abstain from it – I mean, forever. That’s it.” Tr. at 122-23. The individual’s wife corroborated the individual’s testimony regarding his complete abstinence since April 2006 and his dedication to AA, adding that “he has just improved immensely . . . [a]nd I am much happier.” Tr. at 35.

The Psychologist opined that the individual has made “great progress” and is “doing very well.” Tr. at 187. More significantly, the Psychologist expressed her opinion that the individual has shown adequate rehabilitation and reformation from his Alcohol Abuse and problems with alcohol in the past. Tr. at 193. In the Psychologist’s view, “[the individual] has gotten a very significant wake-up call with this experience, and, yes, I believe he is capable and will not attempt to re-engage with alcohol.” Tr. at 195. To emphasize her opinion, the Psychologist later added that she believes there is only a “.001” probability that the individual would return to drinking. Tr. at 212. The Individual’s Psychiatrist agreed, testifying that: “I think there is adequate evidence of reformation as well, given all the factors . . . I believe, given where he’s at with his treatment so far, and his commitment to it, it’s adequate evidence of rehabilitation . . . I think the probability for relapse is very low at this point.” Tr. at 224-25.

The DOE Psychiatrist testified last at the hearing and expressed his opinion that the individual still had not achieved adequate rehabilitation or reformation based upon his

eight months of sobriety, accelerated AA attendance and counseling with the Psychologist. Based upon the testimony and evidence presented, however, I am more persuaded by the professional opinions of the Psychologist and the Individual's Psychiatrist, and find that the individual has presented sufficient evidence of rehabilitation and reformation. In reaching this conclusion, I am guided by the Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House. Pertinent to the present case, Guideline G (§ 23) states that the security concerns associated with excessive use of alcohol can be mitigated where:

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome his problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(c) the individual is a current employee who is participating in counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress;

In the case of the individual, I note that while the individual has been diagnosed with Alcohol Abuse based upon repeated arguments with his wife, there is no evidence in the record that the individual has drunk to intoxication since August 2005. Thus, the individual has established a period of responsible use beyond his eight months of complete abstinence. This factor, in combination with his treatment, AA attendance and commitment to continued sobriety, leads me to find that the individual has overcome the concerns of DOE Security under Criteria H and J.

B. Criterion L, Unusual Conduct

In reference to Criterion L, the Notification Letter raises several matters, including that the individual: (1) failed to abide by the commitment made in his 1998 LOI that he would not drive after consuming alcohol, (2) gave disparate accounts, during the PSI and psychiatric interview, of an incident in 2000 or 2001, in which he was stopped by the police after leaving a micro-brewery, (3) gave differing estimates of the number of blackouts he has experienced, during the PSI and two psychiatric interviews in 1998 and 2006, and (4) initially denied during the PSI that he had an alcohol-related arrest, but later acknowledged that he had two such arrests, in 1968 for Disturbing the Peace and in 1998 on a charge of DUI. These matters certainly bear upon the individual's honesty and trustworthiness, and I therefore find that DOE Security properly invoked Criterion L in suspending the individual's security clearance. The third matter, concerning the individual's reported number of alcohol blackouts, is discussed above where I attribute the inconsistency to a failure by the individual to fully understand

the question being posed. See note 5, *supra*. The other three matters are discussed below. For the following reasons, I find that the individual has also sufficiently mitigated the remaining security concerns under Criterion L.

Regarding the first matter, the individual acknowledged stating that he would not drink and drive again in the 1998 LOI, that he completed at a time when he felt ashamed and embarrassed for receiving the DUI. See Tr. at 101, 148-49. The individual admitted, however, that after a few years he persuaded himself that it would not be a violation of his commitment to not drink and drive as long as he was not over the legal limit. *Id.* The Psychologist and DOE Psychiatrist agreed at the hearing that the individual's wavering on his commitment not to drink and drive was not actual dishonesty on the part of the individual but instead symptomatic of his Alcohol Abuse condition. See Tr. at 196, 260. While the violation of the individual's promise also raises a Criterion L security concern with regard to his reliability, the record indicates that the individual has been very reliable in matters other than his use of alcohol. As set forth above, I find that the individual has sufficiently mitigated the concerns associated with his diagnosis of Alcohol Abuse and past excessive use of alcohol. I therefore find, correspondingly, that the individual has sufficiently mitigated the concerns about his honesty and reliability raised by his failure to fulfill his 1998 LOI commitment to not drink and drive.

With respect to the second matter, the record indicates that during the PSI the individual stated that he was stopped by the police upon leaving the micro-brewery for having a defective headlight, but said during the psychiatric interview that he was stopped for running a red light. See DOE Exh. 3 at 43; DOE Exh. 2 at 28. The individual explained this apparent discrepancy at the hearing, testifying that he was pulled over by the policeman for making an illegal left turn at a red light when leaving the parking lot, but he was also cited by the policeman for having a broken headlight. Tr. at 105. The individual's wife, who was called to pick the individual up from the scene, corroborated this account of the incident. Tr. at 55-56.

Finally, concerning his initial response during the PSI that he had not been arrested, the individual stated at the hearing that he thought the personnel security specialist was referring to the preceding five years. Tr. at 94-95. The individual explained that the matter of his arrests in 1968 and 1998 had already been fully disclosed to DOE Security, and he thought the personnel security specialist was only concerned with any incidents occurring after 2000, within the five-year re-investigation period. *Id.* I find this explanation plausible and consider the matter resolved.

I note additionally that the individual's co-workers (who are also social friends) and supervisor all testified that the individual has a sound reputation for honesty and trustworthiness. See Tr. at 161, 173, 178. The Psychologist surmised, based upon her psychological testing and seven months of counseling the individual, "I really believe

that this is a gentleman who is not socially skilled enough to be a good liar and not interested in lying. He's a person of integrity . . . he's just not a deceptive kind of person." Tr. at 185. At the hearing, the individual displayed a circuitous style of answering questions which sometimes causes him to confuse the facts he is attempting to relay. However, my overall impression of the individual is that he is honest, and I am satisfied that he did not intentionally attempt to mislead security officials during the background investigation or the PSI.

III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. §§ 710.8(h), (j) and (l) in suspending the individual's access authorization. For the reasons I have described above, I find that the individual has sufficiently mitigated the associated security concerns. I therefore find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should be restored. The Manager of the DOE Operations Office or the Office of Security may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown
Hearing Officer
Office of Hearings and Appeals

Date: March 27, 2007